Petition

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81-391

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1980

MICHAEL E. LaGORGA, Petitioner

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

Michael E. LaGorga
Petitioner
2665 W. 130th Street
Hinckley, Ohio 44233

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1980

No. 80-1541

MICHAEL E. LaGORGA, Petitioner

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Michael E. LaGorga, the petitioner herein, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in the above-entitled case on June 18, 1981.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is unreported and is printed in Appendix A hereto, infra, page 7. The judgment of the United States Court of Appeals for the Sixth Curcuit is unreported and is printed in Appendix A hereto, infra, page 7. The Journal Entry of Judgment of the United States District Court, Northern District of Ohio, Eastern Division, is printed in Appendix B hereto, infra, page 9.

JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit (Appendix A, infra, page 7) was entered on June 18, 1981. The jurisdiction of the Supreme Court is invoked pursuant to 28 U.S.C. § 1254 (1).

QUESTION PRESENTED

Whether, in light of the testimony, there was sufficient evidence for the jury to find the Petitioner guilty of the charge of conspiracy as alleged in the Indictment.

STATUTORY PROVISIONS INVOLVED

This case involves 18 U.S.C. §371 which provides:

> If two or more persons conspire either to commit any offense against the United States or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do act to effect the object of the conspiracy, each shall be fined not more than Ten Thousand Dollars or imprisoned not more than five years or both.

STATEMENT OF THE CASE

This is a criminal action brought by the United States of America, the respondent, against Michael E. LaGorga, the petitioner. The issue before this Court arose when the United States Court of Appeals for the Sixth Curcuit affirmed the judgment of the United States District Court for the Northern District of Ohio, Eastern Division convicting the defendant under 18 U.S.C. § 371. The instant action was commenced when a federal

grand jury returned indictments against the petitioner which alleged that he had engaged in counterfeiting, conspiracy to counterfeit and plate making in violation of 18 U.S.C. § § 471, 472, 474 and 371. The petitioner was acquitted by the jury on the three substantive counts of counterfeiting but was convicted on the conspiracy charge. Petitioner was acquitted of the substantive charges despite the fact that on the witness stand petitioner freely admitted all of those elements of the substantive crimes for which he had been indicted except the intent to defraud.

In light of the testimony presented, the fact that the jury acquitted petitioner on the substantive counts clearly demonstrates that the jury found the defendant lacked the requisite intent to commit the substantive crime. Therefore it follows that the guilty verdict on the conspiracy count cannot be sustained because the degree of criminal intent necessary for a conviction under the conspiracy charge is equal to that degree of criminal intent necessary for the substantive offense.

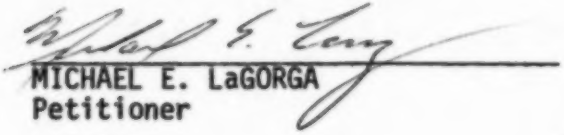
The matter was appealed to the United States Court of Appeals for the Sixth Circuit. After consideration of the appeal, that Court affirmed the judgment of the United States District Court for the Northern District of Ohio, Eastern Division. It is from that decision that the Petitioner now seeks issuance of a Writ of Certiorari.

REASONS FOR GRANTING THE WRIT

The issue in this case involves the sufficiency of evidence of criminal intent necessary for conviction on an indictment of conspiracy under 18 U.S.C. § 371. In Ingram v. United States, 360 U.S. 672, this Court held that in order to sustain a judgment on a conspiracy charge, the government must prove at least the degree of criminal intent necessary for a conviction on the substantive charge. The action of the Court of Appeals in affirming the verdict of the trial court is in direct conflict with Ingram.

CONCLUSION

Wherefore, the petitioner respectfully prays that a writ of certiorari be granted.



MICHAEL E. LaGORGA
Petitioner

APPENDIX A

No. 80-5141

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee,	)	
v.	)	ORDER
MICHAEL E. LaGORGA, Defendant-Appellant	)	

BEFORE: KEITH and MARTIN, Curcuit Judges,
PHILLIPS, Senior Judge

In December, 1978, the defendant was indicated together with one Fred Zweiner in the United States District Court for the Northern District of Ohio on various charges of counterfeiting and conspiring to counterfeit United States currency. Zweiner pleaded guilty prior to trial and testified against the defendant. The jury convicted the defendant of the

conspiracy count, but acquitted him on the substantive counterfeiting counts. The defendant was sentenced to a 3 year term to run consecutively with a sentence he was then serving on another conviction. This appeal was then brought.

The defendant's principal contention is that there was insufficient evidence to support his conviction. We have examined the record of this interesting "double double cross" and conclude that there was ample evidence of defendant's guilt.

The defendant also argues that since he was acquitted on three substantive counts of counterfeiting, he must be acquitted on the conspiracy charge as well. He reasons that when the jury acquitted him on the substantive charge they found he lacked criminal intent to commit these crimes and thus found he lacked the criminal intent necessary for his conviction on the conspiracy charge.

We disagree. An appellate court may not

deduce specific findings from a general verdict of acquittal. United States v. Lichtenstein, 610 F.2d 1272, 1279 (5th Cir. 1980). In addition, juries are permitted to render inconsistent verdicts. Dunn v. United States, 284 U.S. 390, 393 (1932).

The judgment of the district court is affirmed.

ENTERED BY ORDER OF THE COURT

_____

Clerk

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA	)	CR78-208
v.	)	JUDGMENT AND PROBATION/COMMITMENT
MICHAEL E. LaGORGA	)	ORDER

There being a finding/verdict of not guilty Re: Counts II, III and IV and a finding/verdict of guilty Re: Count I; defendant has been convicted as charged of the offense of conspiring with another person to commit offenses against the United States, as charged in Count I of the Indictment; in violation of Title 18, Section 371, United States Code.

Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized

representative for imprisonment for a period of three (3) years.

IT IS FURTHER ORDERED that the within sentence run consecutively to sentence now being served by defendant under Case No. CR78-133, Northern District of Ohio.

IT IS FURTHER ORDERED that Counts II, III and IV of the indictment be dismissed.

4-11-80
Date

John M. Manos
U.S. District Judge

APPENDIX C

Petitioner believes that it is instructive for this Court to view the treatment of the Petitioner's Application for Release Pending Appeal by the Federal District Court. On April 10, 1980, Judge Manos sentenced Petitioner to three (3) years in prison. Petitioner then moved the District Court for Release Pending Appeal pursuant to 18 U.S.C. Section 3148 which provides:

> "A person ... (2) who has been convicted of an offense and is either waiting sentence or has filed an appeal or a petition for a writ of certiorari, shall be treated in accordance with the provisions of Section 3146 unless the court or judge has reason to believe that no one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person in the community. If such a risk of flight or danger is believed to exist, or if it appears an appeal is frivolous or taken for delay, the person may be ordered detained."

The District Court denied Petitioner's motion solely on the basis of an alleged threat made by Petitioner to co-conspirator Zweiner. See Exhibit "A" attached.

It is clear however, that Petitioner presented sufficient evidence to overcome the question of an alleged threat and meet the burden of showing that he is entitled to Release Pending Appeal. By way of review, Petitioner presented evidence to the District Court that the alleged threat was made while Petitioner was maintaining an image of a criminal counterfeiter with the knowledge and assistance of the United States. During the pendency of the instant matter, Petitioner attended all appearances required by him while he was free on personal bond. The crimes committed by Petitioner have never been violent crimes. Petitioner is forty-nine (49) years old, in ill health and

classified as Security Level One, Out-Custody. Most importantly, from November 2, 1978 (the date of the alleged threat) to January 9, 1980 (the date of sentence) Petitioner was free in co-conspirator Zweiner's community, Strongsville, Ohio, and no harm nor any threat of harm came to Zweiner.

For all these reaons, it is clear that the District Court abused its discretion in denying Petitioner's motion for Release Pending Appeal.

AFFIDAVIT OF SERVICE

I, Michael E. LaGorga, being first duly sworn, depose and say that three (3) copies of the foregoing Petition for Writ of Certiorari were forwarded to James R. Williams, U.S. Attorney, Suite 405, Investment Building, 601 Rockwell Avenue, Cleveland, Ohio 44114 and to William C. Brisen, Department of Justice, Appellate Building, Ben Franklin Station, Washington, D.C. 20044 by regular U.S. mail, postage prepaid, this 12th day of August, 1981.

Michael E. LaGorga
MICHAEL E. LaGORGA

SWORN TO and subscribed in my presence this 12th day of August, 1981.

Robert T. Tinl
Notary Public

ROBERT T. TINL
Notary Public, State Of Ohio
My Commission Has No Expiration Date
Section 147.03 R.C.